

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013050794

ORDER GRANTING IN PART AND
DENYING IN PART DISTRICT'S
MOTION TO DISMISS

On May 21, 2013, Student filed a request for due process hearing (complaint), naming the Irvine Unified School District (District) as the respondent.

On May 31, 2013, the District filed a motion to dismiss Student's complaint. The District alleges that many of Student's allegations are beyond the applicable statute of limitations. The District also alleges that various allegations raised by Student fail to provide sufficient factual background in support of the allegation. Finally, the District moves to dismiss all allegations brought by Student under Section 504 of the Rehabilitation Act of 1973 (Section 504).

Student filed an opposition to the District's motion on June 5, 2013. Student acknowledged that her issue 2(B) was beyond the statute of limitations and, by way of her opposition pleading, withdrew issue 2(B) from the complaint. Student further acknowledged that the Office of Administrative Hearings does not have jurisdiction over Section 504 issues, and explained that she raised the issues only to demonstrate exhaustion of administrative remedies. Finally, with regard to the District's arguments that some of her issues were outside of the statute of limitations, Student stated that the information was provided for background purposes only and that she reiterated several times in her complaint that she was only alleging violations for the due process hearing that occurred on or after May 21, 2011, when the statute of limitations begins in this case.

APPLICABLE LAW AND DISCUSSION

Section 504 Allegations

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification,

evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) and Student acknowledges that fact. All allegations raised in the complaint alleging violations of Section 504 are dismissed.

Statute of Limitations

The statute of limitations in California was amended, effective October 9, 2006, and is now two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) However, Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency’s withholding of information from the parent that was required to be provided to the parent. Here, Student has not alleged that any of these exceptions apply.

In her opposition to the District’s motion to dismiss, Student clarifies that she was not attempting to raise issues before to May 21, 2011, two years prior to the filing of her complaint. However, because is not clear on the face of some of Student’s allegations that she is limiting the allegations to the time period after May 21, 2011, it is appropriate to grant the District’s motion to dismiss in order that the parties, the hearing judge, and any reviewing court have a clear understanding of the time period covered by the issues raised in the complaint.

Failure to Provide Sufficient Supporting Facts

Finally, the District alleges that Student’s issues 2(B) and 3(A) through (C) should be dismissed because the factual support for the issues relates to time period prior to May 21, 2011. The District contends that because there is no factual support for the allegations for the time period after May 21, 2011, these issues must be dismissed in their entirety.

Student has withdrawn issue 2(B). Therefore, the District’s contentions as to this issue are moot.

With regard to issues 3(A) through 3(C), Student has clarified that her intent was to raise the allegations only with respect to the time period subsequent to May 21, 2011. As stated above, the undersigned is dismissing the allegations for the time period prior to that date. Although the District is correct that the issues fail to give much factual basis for the allegations as they relate to the time within the statute of limitations, the failure to allege sufficient facts is not a proper basis for a motion to dismiss. Rather, contentions that a complaint does not contain sufficient support for issues raised must be brought by way of a notice of insufficiency within 15 days of the filing of a due process complaint. Here, the District has failed to present a timely notice of insufficiency and has therefore waived any arguments concerning the lack of factual support for the issues in Student's complaint. The District's motion to dismiss based upon the lack of factual support for issues 3(A) through 3(C), is therefore denied.

ORDER

1. The District's motion to dismiss all allegations in the complaint brought under Section 504, is granted.
2. The District's motion to dismiss all allegations of the complaint arising prior to May 21, 2011, is granted.
3. The District's motion to dismiss issues 3(A) through 3(C) for failure to provide a sufficient factual basis for the allegations is denied.
4. Student's motion to withdraw issue 2(B) is granted.
5. The matter shall proceed as scheduled on Student's issues 1, 2(A), 3(A), 3(B), and 3(C), for the time period of May 21, 2011, to May 21, 2013.

Dated: June 7, 2013

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings